

REMARKS

Careful consideration has been given to the Official Action of June 9, 2009 and reconsideration of the application as now presented is requested.

The Examiner's courtesy in conducting a telephone interview on September 4, 2009 with Applicant's representatives Clifford J. Mass and Jeff Tsai is greatly appreciated. The substance of the interview is as discussed below with respect to Applicant's reply to the Official Action.

Claims 1, 9, 13-15, 18, and 20-22 stand rejected under 35 USC 103(a) as being unpatentable over Milstein (US Patent No. 5,358,467) in view of Sampson (US Patent No. 904,650).

Claims 23 and 24 stand rejected under 35 USC 103(a) as being allegedly unpatentable over Milstein and further in view of Fang (US Patent No. 5,377,701).

In accordance with suggestions that arose at the interview, for which the Examiner's input is gratefully acknowledged, claim 1 has been amended to recite that the membrane has a peripheral groove into which a bottom edge of the chamber is inserted such that only the membrane contacts the skin when the handset is placed over the patient's skin to treat the skin. Support for this can be found, for example, at page 11, line 25 - page 12, line 8, and Figs. 2-4 which clearly show that the peripheral groove 103a of the membrane, into which the

bottom edge 102a of chamber 102 is inserted, allows the only the membrane to be in contact with the skin during use. Since only the membrane comes into contact with the patient's skin during use, hygiene can be achieved simply by replacing or cleaning only the membrane after each use. In contrast, the membrane of Milstein is secured to the rigid frame 17, at a distance above the lower edge of the handset so that warm or cool air can be circulated between the skin and the membrane. Consequently, Milstein requires a separate elastic pad 13 at the lower edge of the handset for contacting the skin. See Fig. 1.

Furthermore, as discussed during the telephone interview with respect to the proposed claim submitted in the Proposed Agenda for Interview submitted on September 2, 2009, the claimed invention is directed to a membrane having a unique configuration of holes and lateral portions (and projections at the lateral portions), wherein the two lateral portions are disposed with respect to the central portion such that, when the variable vacuum generates a cyclical action to lift and unlift the skin, the two lateral portion move toward and away from each other to fold and unfold the skin therebetween. The movements of the lateral portions during use are indicated by F2 and F3 in Figs. 2 and 3. As can be seen in those figures, since holes 103c are only provided along the central portion (no holes are provided in the lateral portions), when a cyclical suction is generated by the variable vacuum, the skin is lifted only along the central portion, while the lateral portions are moved toward each other to fold and unfold the skin therebetween.

The Examiner contended that because the membrane of Milstein is elastic, it is conceivable that the middle portion of the membrane could be lifted higher than the outer

portions of the membrane forming an arch shape wherein the bumps 19 would be moved toward each other. Applicant's representatives respectfully do not agree with the Examiner's hypothesis because, as shown in Fig. 1, Milstein clearly intended the vacuum suction to be evenly distributed over the entire membrane by providing through holes 18 that are equally sized and spaced, and evenly distributed between bumps 19. Even distribution of the vacuum suction over the entire membrane is, in fact, desired by Milstein so that the warm or cool air can be evenly distributed over the entire surface of the skin being treated. Therefore it is respectfully submitted that the bumps of Milstein would not move toward each other.

Nevertheless, in order to distinguish more clearly over Milstein, new claim 25, which corresponds substantially to the proposed claim discussed during the telephone interview, recites that the holes of the central portions are spaced and aligned along a central axis such that, when the variable vacuum is generated, a lifting force is generated through the holes in a vertical direction in the central portion only, and that each of the plurality of projections is disposed with respect to the central portion and offset from the central portion such that, when the variable vacuum is generated, the skin is lifted in a vertical direction by the holes along the central axis while each of the first set of projections moves in a first oblique direction with respect to the vertical direction and each of the second set of projections moves in a second oblique direction with respect to the vertical direction with the first and second set of projections moving toward each other to pinch the skin.

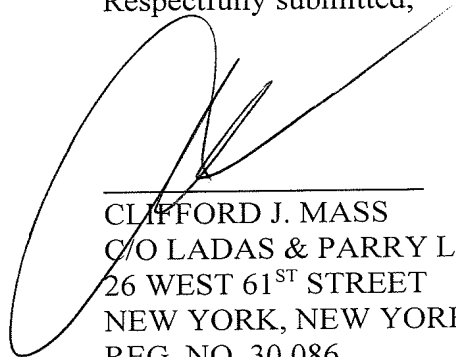
In Milstein, at least some of the projections are constrained from the claimed movement since there are holes on either side of the projections. Furthermore, since the holes

are provided throughout the membrane, the suction force next to each of the bumps 19 would lift the bumps vertically, i.e. there is no movement in the oblique direction, and there would be no pinching on the skin. Moreover, Milstein teaches away from holes on a central axis only (or only lifting along a central axis only) and from **each** of the claimed projections being aligned as claimed. (Note: this recitation distinguishes the claimed device from devices in which some of the projections are not so aligned. See *In re Skvorecz* 2008-1221 (Fed. Cir. 2009), decided 3 September 2009 (“The board erred in holding that some wire legs of the Skvorecz device, as claimed, need not have an offset, when the claims state that each wire leg has an offset.”)).

New claim 26 recites that the lateral portions have no holes. This is clearly supported by the embodiment shown in Figs. 2, 3, and 5-8. In contrast, Milstein requires holes uniformly dispersed throughout its membrane and thus teaches away from this claim limitation.

In view of the above action and comments, it is respectfully submitted that the application as now presented is in condition for allowance and early notice thereof is earnestly solicited.

Respectfully submitted,



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